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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-018

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Is it the department's intent that a responsible party who is granted an exemption under s. NR 726.05 (2) (c) because “it is not technically or economically feasible to reach NR 140 preventive action limits” would be required to minimize the concentration of the substance in the groundwater? [See s. 160.23 (1) (a), Stats.]

2. Form, Style and Placement in Administrative Code

a. The full citation should be included at the beginning of a subunit of a rule that is amended. For example, see the amendment of s. NR 140.24 (4).

b. Throughout the rule, parenthetical material should be deleted, worked into the text or placed in a note. [See s. 1.01 (6), Manual.]

c. Several typographical errors should be corrected, such as the proper paragraph form for the fifth paragraph in table 5; the lack of a space between “or” and “other” in s. NR 140.26 (2) (a); and the proper paragraph form for s. NR 724.13 (3) (a) 3.

d. The treatment clause to SECTION 10 should state: “NR 724.13 (3) (a) 1., 2. and 3. are amended to read:”. Paragraph (a) (intro.) and 4. should not be shown since they are unaffected by the rule. Also, SECTION 10 of the rule should precede SECTION 8 so that the rule provisions are in numerical order.

- e. The cross-reference in s. NR 726.05 (2) (b) 4. and (c) should be “ch. NR 140.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. NR 140.05 (14m), should “concentration and mass” be changed to “concentration or mass”? Also, “its” should not have an apostrophe.

- b. The first sentence in s. NR 140.24 (4), as amended, relates to responses that the department may take or that the department may require the owner or operator to take. Should the second sentence refer to responses that may be taken or required by the department? See, also, s. NR 140.26 (2) (a).

- c. The last sentence of s. NR 140.26 (2) (a) is unclear. Does this mean that the department may not require the first response listed in table 5, or that if the department requires the first response, it may not require any of the other responses?

- d. The line added to s. NR 722.07 (2) should be made singular by using “the initial screening” and “the responsible party.”

- e. The word “forms” should be used rather “form” in the Notes after ss. NR 722.07 (2) (a), 724.13 (3) (e) and 726.05 (2) (a).

- f. Section NR 726.05 (2) (b) authorizes a responsible party to request case closure. If a responsible party does not request case closure, is it appropriate, as proposed in s. NR 724.13 (3) (a) 3., to require an evaluation of whether or not active remediation should be modified or turned off with each quarterly progress report for a complex system?

- g. In s. NR 726.05 (2) (b) 4., which properties are the “properties in question”? Is it each parcel for which the enforcement standard is exceeded? Is it only parcels owned by the responsible party? How does this relate to the newly defined term “property boundary”? What is the nature of a “well restriction,” who is bound by it and how will it be enforced? What are the “applicable special well construction requirements” referred to in this paragraph? The words “non potable,” as used in s. NR 726.05 (2) (b) 4. and elsewhere in the rule, should be one word. [See s. 160.21 (2) (b) 1. a., Stats.]

- h. The word “future” in s. NR 726.05 (2) (b) 5. is superfluous.

- i. The last sentence of s. NR 726.05 (2) (c) establishes a procedure for recording an affidavit that gives notice that the previously recorded well restriction is no longer required. As drafted, this affidavit is only recorded if an exemption has been granted. However, the first sentence of s. NR 726.05 (2) (c) authorizes the responsible party to request the department to record an affidavit if groundwater contaminant concentrations fall below the preventive action limits, in which case an exemption would not be necessary.

- j. Section NR 726.05 (8) (am) 3. uses the term “on site sewage disposal system.” The proper statutory term is “private sewage system.” The department may wish to consult the Department of Industry, Labor and Human Relations staff regarding the terminology in proposed

revisions to ch. ILHR 83. This subdivision also requires a “WPDES permit” to be obtained if nonpotable water is to be discharged to the environment. Are there any circumstances in which nonpotable water will not be discharged to the environment after use?